

## ADMINISTERING JUSTICE IN MONTANA'S RURAL COURTS

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*A young mother sits among the prospective jurors holding her baby. When I inquire about hardships, she explains that she truly cares about our judicial system and wants to do her civic duty but that her mother just broke her wrist and she had no other childcare options. In another matter, an elderly juror shuffles forward to the bench and explains that he hitchhiked the 40 miles to court and he had no ride home.*

The foregoing is a typical scenario in Montana's rural courts. The district courts located in Montana's more rural areas deal primarily with respectful populations that greatly appreciate the judicial branch. Although serving less populated areas, these courts and the lawyers appearing before them often see the best rural Montana has to offer – its community-minded and friendly people.

Montana is the fourth largest state in the United States<sup>1</sup> but one of its most rural states.<sup>2</sup> It is third only to Alaska and Wyoming in fewest people per square mile.<sup>3</sup> Montana's vast area is divided into 56 counties with each having their own local governing bodies. Nearly all govern more area in their respective counties than the Governor of Rhode Island.<sup>4</sup> Several cover an area close to or exceeding three times the size of Rhode Island.<sup>5</sup>

A district court is located in each of Montana's 56 counties. By state law, these 56 district courts are administratively structured into 22 judicial districts.<sup>6</sup> These judicial districts range in size from one county to as large as 7 counties. As of January 1, 2009, Montana has 43 district court judges to serve all these judicial districts.<sup>7</sup>

Montana has 10 district court judges to reside within a contiguous area larger than Maryland and the 6 states making up New England.<sup>8</sup> Nearly 80% of Montana is covered by judicial districts that average no more than one judge per county.<sup>9</sup>

Many of these "rural courts" and the attorneys practicing law before them seek satisfaction and face challenges that vary greatly from those in the more urban areas of Montana. This article will share some thoughts and experiences on those matters from the perspective of neighboring judges for two of the rural courts.<sup>10</sup>

### ACCESS TO COURT

Article II, Section 16 of the Montana Constitution provides:

Courts of justice shall be open to every person, and speedy remedy afforded for every injury of person, property or character.

District courts are general jurisdiction courts. As such, the district court in each county will preside over all felony, probate, abuse and neglect and adoption cases, various special actions such as naturalization and writs, most parenting cases and cases in equity, all civil cases with claims over \$7,000.00 and any civil action that can result in money judgment against the state. The district court also has appellate jurisdiction over cases arising within the justice and city courts of a county.<sup>11</sup>

The constitutional mandate for "open" access to all and "speedy remedy afforded for every injury" is a primary challenge for the rural courts in Montana. To meet this challenge, the law requires the district court in each county to be regularly accessible.<sup>12</sup> This access calls for regular appearance by the court participants. Those participants routinely include the district court judge, the court clerk, the court reporter, attorneys and litigants. With various witnesses and jurors, the number of participants can be quite large.

*The parking lot is filled with muddy vehicles. The corridor is standing room only. Many of the summoned jurors know each other and others just get acquainted. The conversations cover topics such as last week's livestock market, the weather forecast, a quilting project, the upcoming ballgame, a hot fishing hole and, of course, the grandchildren.*

*The deputies maneuver among the crowd to direct counsel to a secure room to meet with the defendant. The sheriff lingers to visit and assure witnesses are kept elsewhere. Ultimately, the defendant, counsel and jurors are directed to the courtroom. The prosecutor is already there. Voir dire begins. As individual jurors are excused, they nod goodbye to those still on the panel. The whole process seems to bring the community closer together.*

The regular appearance must move court matters toward a "speedy remedy ... for every injury." This constitutional requirement means the court must hold regular "law and motion" dates in each county. Throughout rural Montana, these regular law and motion days are generally no less than two days per month and can be as often as several days per week.<sup>13</sup>

The regular law and motion calendar frequently requires travel. Litigants, attorneys and witnesses can be from another county or state. Local litigants as well as jurors frequently reside several miles from the county seat where the courthouses are located. Travel burdens for all must be considered in assuring the court remains accessible.

*The mother and children moved to northeastern Montana two years ago. Father and paternal relatives still reside in Idaho. The children attended school and received professional counseling there. Father retains an attorney from western Montana and closer to his witnesses. Mother lists Montana school teachers and counselors as witnesses. In a pretrial order, parties are informed to know witness' schedule conflicts and be prepared for firm trial setting.*

The judge of the multi-county judicial district must travel to each county. This travel significantly impacts the availability of the rural court judge and staff. A 2007 National Center for State Courts (NCSC) survey showed several Montana rural court judges travel nearly 1/4<sup>th</sup> of the time available for court activity.<sup>14</sup>

*I am assigned a state motor vehicle. On occasion, I use my personal vehicle due to road conditions or other travel limitations. My travel logs show that I average nearly 20,000 miles per year for judicial business. The court reporter has a corresponding demand.*

This travel demand comes with Montana travel hazards, such as two-lane traffic, road construction, sudden storms, the blinding sunrise or sunset and the ever present roadside wildlife. Large trucks, tractors, RVs and travel trailers will use the same roads. All these hazards can and frequently do delay matters.

*It is ten minutes before start of court. The court reporter has not yet arrived. The clerk appears to advise she hit a deer and her vehicle is temporarily inoperable. Court is delayed to allow alternate transportation. I hit two pheasants in the same stretch of roadway just a week later.*

The travel requirement makes for practical challenges as well. Extra effort must be taken to assure a vehicle is fueled and properly maintained. Updated weather and road reports must be considered. The judge must provide time at each court for administrative and chamber tasks.

All this travel demand can impose fatigue. After a long and tiring day in court, the rural court judge often travels many miles back home alone.<sup>15</sup>

*I'm thinking, "Just don't hit the brakes."*

*It's a dark autumn evening. The northwest wind is blowing and the temperature hovers around 32 degrees. I have spent all day presiding in a contentious case at Roundup. As I drive the 160 miles home, I follow another vehicle traveling the same direction. At the crest a hill, we encounter black ice. The vehicle in front of me slides sideways towards oncoming traffic. The two vehicles collide.*

*I carefully guide between the two and go another 1/4 mile before I am able to stop. On turning around, I find the occupants not seriously injured and wait the two hours for assistance.*

At the same time, this travel time offers a peaceful opportunity to reflect on the day's events. During the trip home, many rural judges sort out the legal argument just heard to give organization to their decisions. Attorneys do the same regarding the presentation of

their case or oral argument. An occasional sunrise, sunset or other encounter can provide a memorable and stress-relieving event.

*On my way through the Missouri River Breaks, I notice 4 bull elk about to cross the highway. They wait along the road edge as I slowly pass within a few feet of them. The day in court was long but the memory of this event made it easier.*

Accessibility also means the rural court's calendar must be somewhat flexible. During regular law and motion, a rural court can expect to conduct initial appearances, arraignments, omnibus hearings and hearings for change of plea, adult sentencing, youth disposition, abuse and neglect, temporary order of protection, default or stipulated divorce, parenting modification, name change, step-parent adoption, probate status, pretrial civil motions and the like. Since the judge is not always in that county, parties can and do present matters with little or no notice. A rural court judge cannot always anticipate this type of "last-minute activity."

*It's one hour travel; then regular law and motion at 9:00 A.M. An arraignment turns into a change of plea. The omnibus hearing has several contested motions. The dispositional hearing involves a factual dispute. The summary judgment hearing is delayed until after lunch. The afternoon calendar is more of the same. Court finally adjourns after 7:00 o'clock P.M. Another hour to review and sign documents in chambers. I leave for home.*

Carryover of regular law and motion matters to the following day is difficult for many rural courts. The calendar must allow time for extended hearings and trials at each district court. For this purpose, certain days of each month are generally assigned for regular law and motion and the balance of the month is assigned for extended hearings and trials.

The rural court's schedule and schedule of counsel often result in stacking of matters (i.e., setting more than one matter for the same time). In the multi-county district, this stacking can result in the court scheduling matters for the same time at different locations. As earlier stacked matters proceed to hearing or trial, the others move to a different date but even then, there is no assurance the delayed matter is heard.

*On a particular day, I schedule extended hearings or trials at three different locations - 260 miles apart. One setting is actually a carryover requested by counsel from a week-long jury trial set to commence the previous week.*

Hearing or trials that extend beyond the allotted time can significantly disrupt a rural court's accessibility. As noted, later stacked matters must be moved. Regular law and motion may need to be moved to accommodate these matters. All these changes will have a domino effect on participants' availability and timely hearing of other matters.

Long term detention facilities are frequently in other communities and the smaller sheriff offices need time to arrange transportation. Attorneys will have matters in several courts

and judicial districts. The expert witness may have already set aside appointments for the hearing/trial. Jurors, litigants and other witnesses will have personal or seasonal hardships.<sup>16</sup>

Certain priority settings must also be recognized. The criminal matters must be calendared to provide the accused with his/her right to a speedy public trial. Article II, Section 24 of the Montana Constitution. By statute, Youth Court proceedings must be heard without delay.<sup>17</sup> Other statutes also impose deadlines. For example, unless respondent requests additional time, initial hearing and disposition of petitions for mental commitment must be within 5 days. Hearings after temporary order of protection or initial show cause hearing on an abuse and neglect petition must be within 20 days.<sup>18</sup>

The rural courts, as all courts, can face a variety of complex issues every day. Pretrial matters on multi-million dollar damage claims over natural resource development and extraction issues can be heard just moments after approving an accounting and property division in the split of a large family farm. Interesting and challenging jurisdiction issues develop. Pretrial challenges to the admission of evidence are common. Resolution of personal injury claims will frequently require in-depth knowledge of human anatomy and medical procedure.

*The criminal offense involved collision of two boats in the middle of the Fort Peck Reservoir in northeastern Montana. This reservoir has more shoreline than the west coast of California. A jurisdictional issue arose involving the location of the collision. The issue was resolved only after old surveys and aerial photographs were presented and explained through expert testimony.*

Rural Montana needs more residential attorneys. Some county prosecutor offices are understaffed. Other counties have only part-time prosecutors whose prosecution work must be balanced with their private practices. A few counties have no residential attorneys outside of the prosecutor's office. Other established attorneys often do not have the time or the willingness to do public defender services.

Public defenders can travel hundreds of miles just to get to the courtroom.<sup>19</sup> When the case involves multiple parties entitled to counsel, it can be a challenge to find independent counsel for each party.

*In a recent case, the State removed the young child from the home based on alleged abuse and neglect. The office of public defender had attorneys from three different communities representing the parents and child. At the show cause hearing, the child's attorney appeared in person, the mother's attorney appeared by audio-video conference from 165 miles to the west and the father's attorney appeared in a similar fashion from 150 miles to the southeast.*

The shortage of attorneys and the increased availability of forms through today's technology have resulted in courts seeing a significant rise in self-represented litigants. The self-represented litigation is more time consuming. Pleadings do not clearly recite

the issues or legal authority. Parties do not understand what evidence is relevant to a claim or defense. Litigants generally are not familiar with procedural or evidentiary rules.

*The form is entitled "Motion and Affidavit for Enforcement of Parenting Plan." On closer review, I find the mother is actually seeking contempt findings and modification of a stipulated parenting plan. The previous parenting plan called for joint residential parenting.*

*At the hearing, Mother testifies to several oral modifications. The Father then takes the child, moves out of state and refuses to identify his residence. Father represents a child protection specialist authorized retention when Mother had other children removed from her home in an abuse and neglect investigation.*

*Mother claims the investigation has long since closed and law enforcement will not assist based on the history of oral modification. Neither parent has counsel. Neither parent calls a witness. I recess to subpoena law enforcement and child protection services. When we reconvene, it takes a full day to gather the relevant evidence.*

Today's technology also provides considerable help in making rural courts more accessible. Since state assumption in 2001<sup>20</sup>, the Supreme Court and the District Court Council have made available to district courts throughout the state technology such as the internet, case management software, fax machines and two-way audio-video communication.<sup>21</sup>

*I have 10 matters scheduled on law and motion day. With a raging blizzard outside, cancellations are coming constantly. Of the few hearings held, one had to be continued because of the absence of a witness. I can conduct the other hearings only because local attorneys make it to the courthouse and out-of-town counsel appear by video conferencing.*

These technological resources still have their limits. Fax copies do not transmit in color and can become illegible. Audio can be subject to static interruption and the microphone too sensitive. The video limits viewing of a witness' demeanor or manner of testifying and prevents use during testimony of most demonstrative charts. Momentary delay in both the audio and video can occur. The Court will have difficulty controlling the physically absent witness or attorney. Confrontational problems exist in criminal cases.<sup>22</sup> Montana statute allows this type of communication to be used in only certain criminal proceedings.<sup>23</sup>

As the technology improves and fewer litigants object to its use, it can become a valuable time saving tool. It can also increase workload as the technology allows better access for litigant research and increased availability of expertise.

*In the weeks before trial, I hold two summary judgment hearings where all counsel appear by audio-video conferencing. I also receive by e-mail the proposed findings of fact and conclusions of law. At trial, I set up my laptop to real time reporting. The laptop is connected to the internet at the bench and contains an updated disc with all Montana Supreme Court decisions and statutes.*

*Counsel set up their own laptops and provide me with a disc containing the master exhibit list and bench copies of exhibits. Parties stipulate to an expert witness appearing by two-way audio-video connection. During cross-examination, the expert is faxed a document for review. At a recess, I check an email with a recent schedule change. When counsel requests a short delay, the updated calendar is at my fingertips.*

## RESOURCES

The District Court Council determined the minimum level of staff support for each judge should be one court reporter, one law clerk and one judicial assistant. The NCSC premised its 2007 Judicial Workload Assessment Study upon each district court judge having this staff support. Several rural courts still do not have this minimal staffing.<sup>24</sup> To that extent, the study does not paint the true workload assessment for the understaffed rural court.

The NCSC Study acknowledged this deficiency in its findings that identify the uniqueness of rural courts and that the study was based only on a quantitative model and not qualitative factors. Such qualitative factors include staff shortages and the corresponding additional workload placed on the residential judge(s) of that court. Rural courts often spend time on tasks that staffing can and do perform in other courts.

Lack of judicial assistant means all the time-consuming scheduling and administrative tasks are placed on the judge. Without a law clerk, the rural court spends precious time doing all the reading, research, legal analysis, reflection and opinion writing. In addition, the court is unable to use the law clerk as a special or standing master<sup>25</sup> to conduct preliminary matters such as initial appearances, arraignments, detention hearings, bail reduction requests, abuse and neglect show cause and temporary support arrangements.

The absence of minimal staffing can impact the quality of a court's performance in other ways. Many rural court judges spend evenings and weekends trying to keep up with the workload. Judicial burnout can result for consistently putting in these additional hours. Such consistent effort can also cause the judge to be more isolated from a community and potentially "out-of-touch" with the community values.

Complex pretrial matters for the understaffed court will delay trial setting. The judge cannot do a hasty review of the pending pretrial motion without risking the oversight of critical evidence or controlling legal precedence. During this time, decisions on other preliminary but essential matters such as support or child removal issues may be delayed

to the maximum deadline risking application of the legal cliché, "Justice delayed is justice denied."

*The national collection agency asserted several claims. The local farmer countered with several claims including punitive damages, violation of federal collection law and intentional infliction of emotional distress for consistent misapplication of payments. The record submitted on summary judgment included several depositions and multiple "fine print" exhibits. My calendar was full with travel, law and motion, extended hearings, research projects and opinions to draft. I compared the summary judgment task to the farmer doing harvest on his own. Harvest would have been ruined as it took me nearly five months to review the record and render a decision.*

Rural Montana has a limited pool of stenographic reporters. District courts are courts of record.<sup>26</sup> Without a record, the courtroom proceedings grind to a halt. Substitute stenographic reporters are not readily available to the rural courts. Contract reporters often travel more than 100 miles to get to the court.

Some rural courts successfully use electronic reporting systems. It may be that with the close of several reporting schools, more and more courts will be going to this type of recording. However, these electronic systems still require an operator to regularly monitor the record. Further, they also do not provide the rural court with a real-time or readily available transcript. Timely production of this record is essential to various court operations.

*The mental commitment is hotly contested. I issue detailed findings from the bench that include commitment to Warm Springs Hospital. The sheriff is prepared to transport the 400 miles there for immediate treatment. The only problem – the findings are so detailed the county attorney wants a transcript before preparing the order of commitment.*

Mental health and chemical dependency issues can be heightened by poverty and the isolation of rural areas. Mental health professionals or dependency treatment providers are often miles from a county seat. The absence of community treatment professionals can contribute to delinquent, criminal, abusive or erratic behavior. The logistics of arranging for and allowing the performance by distant service providers increases the court's workload.

*Prior to arraignment, defense counsel sought a mental competency examination. It took several days to obtain approval from the state office of public defender. The approval requires examination 200 miles away. The earliest available appointment is a month away. Arraignment was postponed. On the date for arraignment, counsel explains that his client's transportation fell through. It took another 6 weeks for the examination to be completed and arraignment conducted.*



Emotions in small communities can run deep, especially in family matters. At the same time, the way of life for many in these communities involves the ownership or possession of firearms and weapons. Courtroom security is the primary responsibility of the county sheriff.<sup>27</sup> However, the county sheriff can be short staffed and will have other responsibilities during court appearances such as prisoner transport. Older structures do not always present a secure facility. The rural court must constantly be attuned to these security concerns.

However, courtroom security has improved over the past few years. The District Court Council had security audits performed by trained officers and coordinated the formation of local security committees in most county seats. Only a portion of the funds needed to implement the audit recommendations have allocated. More security funding will be necessary as the local committees develop and upgrade security measures.

District courts operate with state funding but many of programs for diversionary, rehabilitative, assessment and treatment purposes have other funding sources. The Cognitive Principles of Restructuring Therapy (CP&R) is a well-accepted program used to assist offenders in recognizing their own thinking errors and their lack of empathy for their victims. It is offered in prison and in some of the more populated jurisdictions in Montana. Without additional funds or training of probation officers to conduct the sessions, rural courts have no access to this valuable tool for rehabilitation. The additional funding is often not available to rural courts. Due to smaller tax or membership base, the local sponsoring bodies have less revenue and more staff turnover. The lack of basic services slows the judicial process.

*Father's use of alcohol was placed at issue. Father was instructed to obtain a chemical dependency evaluation. The closest evaluator was 70 miles away at a mental health center. The evaluation was timely completed but the report was delayed due to emergency medical leave and staff shortages. The child custody proceeding was continued for several weeks.*

Many rural courts have only one courtroom. Visiting judges can compete with a residential judge for use of that courtroom. The courtroom can also be used for justice and city court trials. Some rural courthouses even use the courtroom and other court facilities for meeting or polling places. It takes a patient and dedicated rural court to work out the tangles.

*I assumed jurisdiction over the felony jury trial. On my arrival, I found the jury room was the county commissioner's meeting room. During voir dire, I had the county commission clean the room of all materials.*

The court facility will often have other limitations. Acoustic and structural problems can slow jury selection and trial presentation.

*The witness is being cross-examined. Suddenly, the sounds of a tractor and truck filter through the windows. The windows are closed but the steam heat becomes*

*almost unbearable. More frequent recesses are taken to assure the jury remains alert.*

Older floor plans can make it difficult for security and confidential communication.

*The county moves my chambers to make room for the prosecutor's office. The new chambers have no door and an open area shared with the Clerk's office. A bi-fold closet door is installed. I press for a solid door with a lock. The sheriff then asks to use my chambers to temporarily hold a prisoner as there is no other place to keep him secluded.*

As stated above, attorneys are not always available to rural courts. Even when available, the attorney may have a conflict that prevents representation of a particular party. Most rural courts have no legal aid services in the community. Many litigants cannot afford the time and money to travel elsewhere for professional services.<sup>28</sup> The challenge to the rural court is to assure the self-represented litigant has access to legal information and material to present an understandable and timely case.

In this regard, grant programs are available and have been used to contract attorneys for pro bono services. Local librarians have been instructed through the State Law Library on methods of access to on-line services. Individual attorneys in some rural communities offer free or low cost services to assist needy people. Some legal forms are available over the internet. The Montana Supreme Court offers these forms at its web site free of charge.

Resources are of little help to those unaware of their availability or to those lacking the basic knowledge to access them. Rural courts can educate the user regarding these resources only within ethical constraints.

## ETHICS

The recently revised Judicial Code of Ethics<sup>29</sup> contains specific and enforceable rules for a judge to uphold the independence, integrity and impartiality of the judiciary and to avoid appearance of impropriety. Personal and extrajudicial activity is to be conducted to minimize the risk of conflict with judicial obligations. Judicial duties are to be performed competently and diligently.

The court's competency and diligence as noted above are influenced by the court's access demands and resource limitations. Further, rural courts are generally located in small communities where close acquaintanceships can develop between the court, its staff, attorneys and the public generally being served. This familiarity generally promotes flexibility and allows the rural court to tailor justice to individual circumstances. Yet, it also presents situations that can encourage transgression of due process standards or question the integrity and independence of the court.

*It is late afternoon. I am doing research in non-residential chambers. The Clerk enters to advise petitioner's attorney has a last-minute oral request to continue a guardianship matter. I instruct the Clerk to remain and take notes. Counsel explains the matter has just become contested and continuance is not opposed. When heard a month later, the petitioner testifies on cross-examination that her attorney met in chambers with the judge. I immediately have the Clerk recite from her notes.*

When local citizens observe the judge in their rural community, they may be more inclined to approach and make innocent remarks on a matter relevant to a pending case. To minimize risk of an ethical violation, the rural judge must proceed with caution at all social gatherings. Court staff must follow similar steps to avoid becoming an intermediary in ex-parte communication.

*I am at the grocery store. In the bread aisle, I am approached by a relative who makes innocent reference to a paternity case set that week. I tell her to stop and that I am not allowed to hear such information unless properly presented by pleading or in the courtroom. She complies. At commencement of the hearing, I inform parties and their counsel of the nature of the contact.*

Rural court judges are more likely to be presented with litigation where at least one party or a key witness will be known by the court. Automatic disqualification would mean that the court would never be able to operate in a close-knit rural community. The rural court often conducts an early review of pleadings to determine whether circumstances call for recusal.

*A former trial judge advised me to use the "take to dinner" test. If I would take the litigant or key witness to dinner or be taken to dinner by the individual, I should recuse myself. At a recent trial, a witness was being asked about the date he had seen the defendant. The witness turned to me and said, "Judge, do you remember the day I waved to you and your wife as you walked on the highway early one morning? If you do, that was the date that I saw the defendant." Fortunately, the date was not a disputed material fact.*

Even review of the pleadings may be insufficient to place the rural court on notice of an ethical concern. A district judge is prohibited by statute from sitting or acting in any case in which he has an interest or has a relationship to a party or member of a firm of attorneys of record by consanguinity or affinity within the third degree.<sup>30</sup> Rural courts want and expect attorneys or litigants to inform the court of potential statutory or ethical conflicts requiring recusal.

*The dissolution action involves parties who have been separated for months. On the morning of trial, I am advised that my nephew is now dating one of the parties. I am prepared to discuss this matter when counsel for each party approach to advise they had just learned of the same. I offer to recuse myself but*

*parties decline and present a property settlement agreement and negotiated parenting plan.*

Montana statute also entitles each adverse party upon payment of a minimal filing fee to one timely substitution of a district judge.<sup>31</sup> A substitution motion need not state cause for removal. When a rural court judge recuses himself or is timely substituted, he must find another willing to take the case. Often, the available judge is another rural court judge with similar workload and demand.

As a courtesy, parties are instructed to send copies of pleadings to any “outside” judge assuming jurisdiction in the rural court. This courtesy allows that judge to keep better track of cases “outside” a residential judicial district. Attorneys should still check with the court staff of the “outside” judge to comply with any other court management tools used by that judge.

## CULTURAL

Due to generations of working and living among each other, residents of Montana’s rural communities are more likely to be closely connected. The rural court and attorneys must be more inclined to ask questions of prospective jurors and witnesses in the effort to search for the truth and understand any bias or prejudice. When everyone knows either you or your family, there can be reluctance to speak out and reluctance to sit in judgment of another.

*Sisters have been chosen to sit on the jury. During deliberations, the sisters get into an argument with each other. I allow one sister to “cool off” in the courtroom under observation of the bailiff. After this “cooling off” period, deliberations continue.*

The remoteness of these communities often breeds a mix of independence and distrust of “outsiders.” This independent culture is one of the greatest strengths of rural Montana. Yet, it can represent one of the greatest challenges in administering justice in these communities.

Jurors or witnesses may be reluctant to bring forth their true feelings or beliefs on inquiry of unfamiliar counsel or in the presence of other community members. They may misstate or simply fail to recognize the significance of their role as the impartial trier of the fact or as the presenter of fact testimony. Court and counsel must recognize this rural culture for what it is and take appropriate action to assure fair presentation of the case.

*The parties to the personal injury case are well known in the community. For the most part, the young attorney is merely getting a “yes” or “no” group response at voir dire. Occasionally, he will get the brief response, “I can do it.” At a recess, I invite both attorneys to chambers to encourage more interaction with the jury panel.*

Traditional values engrained over many generations and built into teachings can influence the search for truth.

*The Hutterite colony is 15 miles from town. The excited son informed his father of a near collision with a parked vehicle located near the colony. The father called law enforcement and watched movement of the vehicle from a distance. It became apparent the operator was under the influence of an intoxicating substance. Concerned for his son, the elder made several more calls to dispatch. At trial, the elder was reluctant to testify because it was against his religious beliefs to swear the oath as administered by the Clerk. He was allowed to affirm his testimony as the truth. His testimony included regret for placing the calls based on a strongly rooted belief in passivism.*

The Native American culture plays a big part in rural courts. Seven Indian Reservations with their respective sovereign powers are located within or near many rural courts.<sup>32</sup> Montana also has Indian tribes without a reservation base. The Native American will often appear before the court as litigant, witness and juror.

Close familial relations in Native American culture will extend through several generations. Deference will be given based on age or position within a tribe. Community interest will often prevail over individual interest. Respectful relationships become the center of many decisions. Lowering the eyes and speaking softly is a sign of that respect. It is not uncommon for the Native American to be a reluctant witness or to seek jury excuse based on these and other traditional values that forbid the judging of another. Care must be taken to conduct legal proceedings in a manner that gives respect to this culture but yet assures a fair and impartial deliberation.

The Native American culture is particularly important in abuse and neglect proceedings involving Indian children. Rural courts and counsel that regularly practice in these courts must develop a working knowledge of the operations of tribal social services. Whenever an Indian child is removed from the home, the Indian Child Welfare Act (ICWA)<sup>33</sup> requires judges and parties to be aware of cultural practices in child rearing. Availability of ICWA experts on these cultural practices is limited in part due to the required travel. The rural courts and litigants must accommodate through the use of audio-video conferencing or other technology.

Jurisdiction issues will arise between rural courts and the tribal courts within the Indian Reservation. Most Native Americans residing within the Reservation are subject to tribal law but non-tribal members residing there (even Native American, but enrolled in another tribe) can be subject to state law. This multi-jurisdictional component can be a source of frustration for attorneys and the rural court if clear and understandable boundaries are not maintained.

The rural court must still be educated and informed regarding tribal court law and procedure. Domestic relation or protection order cases can require an understanding of a tribal family law order. Various business relationships conducted pursuant to state law

can be impacted by tribal court proceedings. An offender's criminal history may include tribal court sentencing. Parties may seek enforcement of tribal court judgments as a matter of comity. In many cases, the tribal court procedures can be less stringent than those of the state court.

## **EDUCATION**

With work demands and staff shortages, the rural courts struggle to stay informed regarding court decisions or procedural and statutory changes. Periodic conferences help but these conferences often involve additional travel and work demand. Rural courts simply have little time to squeeze an educational session into a busy schedule.

The distance factor also means that there is less contact between the rural courts. A judge of a rural court will often lack the collegial contact that can be developed between judges working from the same community. Without this contact, the rural court has little exposure to helpful ideas or information regarding the organization and processes of similar courts.

A trained staff is a more efficient staff. However, funding, geographic location and small size make it harder for staff members to receive this training. Most staff training is done by the judge trying to put best practices in place based on the judge's own experience or training.

## **EFFICIENCY TIPS**

For judicial efficiency, self-represented litigants and attorneys appearing in the rural courts of Montana should:

1. Take time to be legible with all pleadings.
2. Where reasonably possible, do not wait until the last minute to present matters that impact the court's schedule.
3. Provide a copy of any motions or pleadings to residential chambers of the presiding judge.
4. In motions seeking immediate relief, state what effort has been made to contact the opposing party and any represented position by that party.
5. Use technology to help present your cause. Test it in advance if there is any reliability concerns.
6. Be aware of document software used by the court and present proposed orders/documents using that software.
7. Present proposed orders with any motion seeking early relief, such as motion for continuance.
8. Be open to mediation of disputes.
9. Use pretrial conferences to seriously discuss the stipulation of facts not in dispute and recite those stipulated facts in a proposed pretrial order.
10. Present proposed findings of fact/conclusions of law and judgments on discs or by email attachment to the court's administrative staff.

11. Present bench copies of exhibits.
12. Be sufficiently detailed in any pleading to inform the court on review of any potential ethical concerns.
13. Understand the culture of the area. Do not be afraid to ask questions of the unique cultural groups.
14. Where reasonably possible, advise the court in advance of any security, witness accommodation or other needs for in-court presentations.
15. If you are a new to the area, introduce yourself to court staff. Do not hesitate to ask questions or seek assistance from the Clerk of Court, judicial assistant or from experienced local attorneys regarding the court practice.

## CONCLUSIONS

Understanding of court operations and commitment to adequate funding and staffing is essential to the administration of justice in Montana's rural courts. Without this understanding and commitment, rural courts struggle to provide litigants with timely justice. The potential for error or violation of fundamental and statutory rights also increases.

The community oriented people of rural Montana need legal representation readily available to them. Resident attorneys best fill the need of these independent thinkers.

The number of resident attorneys is shrinking. Established firms need to encourage and seek out associates. Governing bodies, law schools and community members themselves need to encourage attorneys to locate their law practice in rural Montana. The incentives can include residing closer to family and among friendly people, open areas, recreational opportunities, improved teacher to student ratios and a quieter pace of life.

Attorneys looking for a place to settle and practice law should know that the practice before rural courts can be as varied as any other court in Montana. Attorneys that desire a solo practice can consider prosecution or public defender work while getting established. The defender offices frequently seek contracted counsel. Whatever the reason, the nature of practice can involve a quality of life that can only come from living in a rural area.

A 60 mile trip is truly only an hour away. The lack of traffic congestion makes any commute quicker and less stressful. Essential air, train and bus services are generally available locally or just a few hours away. Local schools and their extracurricular activities are a focal point and become a very good way to become acquainted. Social gatherings are as close as the corner café. Anyone willing to serve will find a community organization more than ready to accept them as a member. Neighbors become family.

*The visitor's report<sup>34</sup> reads: X has applied to be full guardian and conservator of Y due to ongoing concerns that Y is unable to manage his own care. Y resides in (the local community). He has no children. He does have some elderly relatives*

*in South Dakota and possibly Canada. However, Y is not in contact with them and feels his neighbors are his support. ... All neighbors felt Y was a wonderful man. All also stated they would visit Y regularly if he were to move. This is a big concern for Y because his neighbors appear to be his family. Y does not talk about relatives, but often speaks highly of his "wonderful neighbors."*

Montana's rural courts are highly regarded by supportive residents. Attorneys and other professionals enjoy a great appreciation by these people. The rewards for administering justice in these rural areas clearly outweigh any of the challenges. It is a wonderful place to call home.

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\* District Judge, 17<sup>th</sup> Judicial District (Blaine, Phillips and Valley counties), residing at Malta, Montana; rural member of District Court Council formed under MCA, §3-1-1602.

\*\* District Judge, 12<sup>th</sup> Judicial District (Hill, Liberty and Choteau counties), residing at Havre, Montana.

<sup>1</sup> Alaska – 656,425 sq. miles; Texas – 268,601 sq. miles; California – 163,707 sq. miles; Montana – 147,046 square miles.

<sup>2</sup> Montana's estimated 957,860 population is less than 0.32% of the nation's population. Approximately 66% of Montana's population (634,610/957,860) resides in the 8 counties of Yellowstone, Missoula, Gallatin, Flathead, Cascade, Lewis & Clark, Ravalli and Silver Bow. U.S. Census Bureau, 2007 Population Estimates.

<sup>3</sup> Alaska: 683,478 population /656,425 sq. mile; Wyoming: 522,830 population /97,818 sq. mile; Montana 957,861 population /147,046 sq. mile.

<sup>4</sup> Rhode Island is 1,545 sq. miles. Only 6 counties are smaller than Rhode Island: Deer Lodge County at 737 sq. miles, Wibaux County at 889 sq. miles, Treasure County at 979 sq. miles, Golden Valley County at 1,175 sq. miles, Liberty County at 1,420 sq. miles and Wheatland County at 1,423 sq. miles.

<sup>5</sup> Beaverhead County at 5,542 sq. miles, Phillips County at 5,140 sq. miles, Rosebud County at 5,012 sq. miles, Big Horn County at 4,994 sq. miles, Valley County at 4,921 sq. miles, Garfield County at 4,668 sq. miles, Fergus County at 4,339 sq. miles, Blaine County at 4,226 sq. miles and Choteau County at 3,973 sq. miles.

<sup>6</sup> MCA, §3-5-101.

<sup>7</sup> MCA, §3-5-102.

<sup>8</sup> Montana's 16<sup>th</sup> Judicial District (Custer, Carter, Fallon, Garfield, Powder River, Rosebud and Treasure counties - 22,699 sq. miles), 17<sup>th</sup> JD (Blaine, Phillips and Valley counties - 14,287 sq. miles), 7<sup>th</sup> JD (Dawson, McCone, Prairie, Richland and Wibaux counties - 9,726 sq. miles), 9<sup>th</sup> JD (Glacier, Pondera, Teton and Toole counties - 8,804 sq. miles), 12<sup>th</sup> JD (Hill, Liberty and Choteau counties - 8,289 sq. miles), 10<sup>th</sup> JD (Fergus, Judith Basin and Petroleum counties - 7,863 sq. miles), 14<sup>th</sup> JD (Musselshell, Golden Valley, Meagher and Wheatland counties - 6,857 sq. miles) and 15<sup>th</sup> JD (Sheridan, Daniels and Roosevelt counties - 5,459 sq. miles) cover a contiguous area of 83,984 square miles. Maryland is 12,407 sq. miles and New England (consisting of contiguous states of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, and Connecticut) covers 69,825 sq. miles for a total of 82,232 sq. miles.

<sup>9</sup> These judicial districts include the 3<sup>rd</sup> (Deer Lodge, Granite, and Powell counties), 5<sup>th</sup> (Beaverhead, Jefferson and Madison counties), 6<sup>th</sup> (Park and Sweet Grass counties), 7<sup>th</sup> (Dawson, McCone, Prairie, Richland and Wibaux counties), 9<sup>th</sup> (Glacier, Pondera, Teton and Toole counties), 10<sup>th</sup> (Fergus, Judith Basin and Petroleum counties), 12<sup>th</sup> (Hill, Liberty and Choteau counties), 14<sup>th</sup> Musselshell, Golden Valley Meagher and Wheatland counties), 15<sup>th</sup> (Sheridan, Daniels and Roosevelt counties), 16<sup>th</sup> (Custer, Carter, Fallon, Garfield, Powder River, Rosebud and Treasure counties), 17<sup>th</sup> (Phillips, Valley and Blaine counties), 19<sup>th</sup> (Lincoln County), 20<sup>th</sup> (Lake and Sanders counties) and 22<sup>nd</sup> (Big Horn, Carbon and Stillwater counties).

<sup>10</sup> The 12<sup>th</sup> and 17<sup>th</sup> judicial districts are located adjacent to each along an area of northcentral Montana that covers approximately 23,000 square miles. The main travel corridor, U.S. Highway # 2, stretches approximately 265 miles from east to west. Although their residential chambers are 90 miles apart, each judge is the closest other district judge.

<sup>11</sup> Article VII, Section 4, Montana Constitution; MCA, §§3-5-302, 3-5-303, 3-10-301



<sup>12</sup> Single county judicial districts must be open every business day; multi-county judicial districts must fix a term of court in each county at least 4 times a year. MCA, §3-5-401.

<sup>13</sup> The number of days varies among multi-county courts as some judicial districts' residential workload is essentially divided equally among all the counties in that district. Other multi-county courts may have the bulk of their residential workload in one county.

<sup>14</sup> NCSC 2007 Montana District Courts Judicial Workload Assessment Study commissioned by the District Court Council.

<sup>15</sup> Those rural court judges with assigned state vehicles are generally precluded by state policy from having non-state employee passengers. Judicial Branch Travel Policy No. 770.

<sup>16</sup> Most medical providers are in the urban areas. Montana's rural areas involve agricultural operations with seasonal demands such as calving, seeding and harvest. Rural Montana has many small businesses that depend heavily on seasonal revenues and have few or no employees.

<sup>17</sup> MCA, §41-5-110.

<sup>18</sup> MCA, §§53-21-122(2), 53-21-127(1), 40-15-202(1) and 41-3-432(1).

<sup>19</sup> The office of state public defender contracts with attorneys to cover many rural courts. MCA, §47-1-215. These contract attorneys can travel over 300 miles for court appearances. (e.g., in the 17<sup>th</sup> JD, contract attorneys travel from Havre to Glasgow, a distance of 165 miles one way).

<sup>20</sup> Chapter 585, 2001 Session Laws.

<sup>21</sup> The two-way audio-video technology, often known by its provider's name, Vision Net, allows instant sight and sound communications.

<sup>22</sup> An accused has the right to confront witnesses against him. Sixth Amendment, United States Constitution and Article II, Section 24, Montana Constitution.

<sup>23</sup> See MCA §§46-7-101 (initial appearance), 46-9-206 (bail hearing), 46-10-202 (preliminary examination), 46-12-201 (arraignment), 46-12-211 (plea agreement), 46-16-105 (guilty or nolo contendere plea), 46-16-123, 46-18-102 and 46-18-115 (verdict or sentencing), 46-16-229 (child witness testimony on certain findings).

<sup>24</sup> These minimum staffing levels are not in place in the 3<sup>rd</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 14<sup>th</sup>, 15<sup>th</sup>, 16<sup>th</sup>, 17<sup>th</sup>, 19<sup>th</sup> and 20<sup>th</sup> judicial districts. Proposals are before the 2009 Montana Legislature to address staff deficiency in the 3<sup>rd</sup>, 7<sup>th</sup>, 15<sup>th</sup> and 17<sup>th</sup> judicial districts.

<sup>25</sup> MCA, 3-5-113, 3-5-122, 3-5-124 to 3-5-126, 41-3-422, 41-5-201(3), Rule 53, M.R.Civ.P.

<sup>26</sup> MCA, §3-1-102

<sup>27</sup> MCA, §7-32-2121

<sup>28</sup> The income level in the State of Montana is approximately 27.2% lower than the median household income in the United States. The top ten Montana counties in terms of poverty rate are all within the area of rural courts (Roosevelt, Big Horn, Blaine, Glacier, Golden Valley, Petroleum, Rosebud, Garfield, Judith Basin and Choteau counties). The Native American ethnicity group holds the highest poverty rate with 38.4 % of residents living in poverty. U.S. Census Bureau.

<sup>29</sup> See 2008 Montana Code of Judicial Ethics effective January 1, 2009 at [www.courts.mt.gov](http://www.courts.mt.gov).

<sup>30</sup> MCA, §3-1-803.

<sup>31</sup> MCA, §§3-1-804, 25-1-201(p).

<sup>32</sup> Blackfeet, Northern Cheyenne, Flathead, Crow, Rocky Boy, Fort Belknap and Fort Peck.

<sup>33</sup> 25 USC § 1901, et. seq.; Title 41, chapter 3, parts 1,2,3,4 and 6, MCA.

<sup>34</sup> Filed under MCA, §72-5-315.